

By: Lucio, et al.

S.B. No. 589

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees; providing a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.2031(a), Occupations Code, is amended to read as follows:

(a) This section applies only to the regulation of the following professions by the department:

- (1) athletic trainers;
- (2) behavior analysts;
- (3) dietitians;
- (4) [~~(3)~~] hearing instrument fitters and dispensers;
- (5) [~~(4)~~] midwives;
- (6) [~~(5)~~] orthotists and prosthetists; and
- (7) [~~(6)~~] speech-language pathologists and audiologists.

SECTION 2. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows:

CHAPTER 506. BEHAVIOR ANALYSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Behavior Analyst Licensing Act.

1       Sec. 506.002. DEFINITIONS. In this chapter:

2               (1) "Advisory board" means the Behavior Analyst  
3 Advisory Board.

4               (2) "Certifying entity" means the nationally  
5 accredited Behavior Analyst Certification Board or another entity  
6 that is accredited by the National Commission for Certifying  
7 Agencies or the American National Standards Institute to issue  
8 credentials in the professional practice of applied behavior  
9 analysis and approved by the department.

10              (3) "Commission" means the Texas Commission of  
11 Licensing and Regulation.

12              (4) "Department" means the Texas Department of  
13 Licensing and Regulation.

14              (5) "Executive director" means the executive director  
15 of the department.

16              (6) "License holder" means a person licensed under  
17 this chapter.

18              (7) "Licensed assistant behavior analyst" means a  
19 person who is certified by the certifying entity as a Board  
20 Certified Assistant Behavior Analyst or who has an equivalent  
21 certification issued by the certifying entity and who meets the  
22 requirements specified by Sections 506.252 and 506.254.

23              (8) "Licensed behavior analyst" means a person who is  
24 certified by the certifying entity as a Board Certified Behavior  
25 Analyst or a Board Certified Behavior Analyst--Doctoral or who has  
26 an equivalent certification issued by the certifying entity and who  
27 meets the requirements specified by Sections 506.252 and 506.253.

1           (9) "Physician" means a person licensed to practice  
2 medicine by the Texas Medical Board.

3           Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS.

4           (a) The practice of applied behavior analysis is the design,  
5 implementation, and evaluation of instructional and environmental  
6 modifications to produce socially significant improvements in  
7 human behavior.

8           (b) The practice of applied behavior analysis includes the  
9 empirical identification of functional relations between behavior  
10 and environmental factors, known as functional assessment or  
11 functional analysis.

12           (c) Applied behavior analysis interventions:

13                   (1) are based on scientific research and the direct  
14 observation and measurement of behavior and environment; and

15                   (2) use contextual factors, motivating operations,  
16 antecedent stimuli, positive reinforcement, and other procedures  
17 to help individuals develop new behaviors, increase or decrease  
18 existing behaviors, and elicit or evoke behaviors under specific  
19 environmental conditions.

20           (d) The practice of applied behavior analysis does not  
21 include:

22                   (1) psychological testing, psychotherapy, cognitive  
23 therapy, psychoanalysis, hypnotherapy, or counseling as treatment  
24 modalities; or

25                   (2) the diagnosis of disorders.

26           SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

27           Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does

1 not apply to a person licensed to practice psychology in this state  
2 if the applied behavior analysis services provided are within the  
3 scope of the licensed psychologist's education, training, and  
4 competence.

5 Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter  
6 does not apply to a person licensed to practice another profession  
7 in this state if the applied behavior analysis services provided  
8 are within:

9 (1) the scope of practice of the person's license under  
10 state law; and

11 (2) the scope of the person's education, training, and  
12 competence.

13 Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter  
14 does not apply to a family member or guardian of a recipient of  
15 applied behavior analysis services who is implementing a behavior  
16 analysis treatment plan for the recipient under the extended  
17 authority and direction of a licensed behavior analyst or licensed  
18 assistant behavior analyst.

19 Sec. 506.054. PARAPROFESSIONALS. This chapter does not  
20 apply to a paraprofessional technician who delivers applied  
21 behavior analysis services if:

22 (1) the applied behavior analysis services are  
23 provided under the extended authority and direction of a licensed  
24 behavior analyst or licensed assistant behavior analyst; and

25 (2) the person is designated as an "applied behavior  
26 analysis technician," "behavior technician," "tutor," or  
27 "front-line therapist."

1       Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter  
2 does not apply to an applied behavior analysis activity or service  
3 of a college or university student, intern, or fellow if:

4           (1) the activity or service is part of a defined  
5 behavior analysis program of study, course, practicum, internship,  
6 or postdoctoral fellowship;

7           (2) the activity or service is directly supervised by  
8 a licensed behavior analyst or an instructor in a course sequence  
9 approved by the certifying entity; and

10          (3) the person is designated as a "student," "intern,"  
11 "fellow," or "trainee."

12       Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does not  
13 apply to an unlicensed person pursuing supervised experience in  
14 applied behavior analysis if the supervised experience is  
15 consistent with the requirements of the certifying entity and  
16 commission rules.

17       Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM  
18 ANOTHER STATE. (a) This chapter does not apply to a behavior  
19 analyst licensed in another jurisdiction or certified by the  
20 certifying entity if the activities and services conducted in this  
21 state:

22           (1) are within the behavior analyst's customary area  
23 of practice;

24           (2) are conducted not more than 20 days in a calendar  
25 year; and

26           (3) are not otherwise in violation of this chapter.

27       (b) A behavior analyst described by Subsection (a) shall

inform the recipient of applied behavior analysis services, or a parent or guardian of the recipient if the recipient is under 18 years of age, that:

(1) the behavior analyst is not licensed in this state; and

(2) the activities and services provided by the behavior analyst are time-limited.

Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT.

(a) This chapter does not apply to a teacher or employee of a private or public school who provides applied behavior analysis services if the teacher or employee is performing duties within the scope of the teacher's or employee's employment.

(b) A person described by Subsection (a) may not:

(1) represent that the person is a behavior analyst, unless the applied behavior analysis services provided are within the person's education, training, and competence;

(2) offer applied behavior analysis services to any person, other than within the scope of the person's employment duties for the school; or

(3) receive compensation for providing applied behavior analysis services, other than the compensation that the person receives from the person's school employer.

Sec. 506.059. USE OF TITLE "BEHAVIOR ANALYST." (a) This chapter does not apply to a person described by Subsection (b).

(b) A person may use the title "behavior analyst" if the person:

(1) is a behavior analyst who practices with

nonhumans, including an applied animal behaviorist or an animal trainer;

(2) teaches behavior analysis or conducts behavior analytic research if the teaching or research activities do not involve the delivery or supervision of applied behavior analysis services; or

(3) is a professional who provides general applied behavior analysis services to organizations if those services:

(A) are for the benefit of the organization; and

(B) do not involve direct services to individuals.

#### SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) The advisory board is composed of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst--Doctoral or hold an equivalent certification issued by the certifying entity;

(2) one licensed assistant behavior analyst;

(3) one physician who has experience providing mental health or behavioral health services; and

(4) three members who represent the public and who are either former recipients of applied behavior analysis services or the parent or guardian of a current or former recipient of applied behavior analysis services.

1       (b) To be qualified for appointment under Subsection  
2 (a)(1), a person must have at least five years of experience as a  
3 licensed behavior analyst after being certified by the certifying  
4 entity.

5       (c) Appointments to the advisory board shall be made without  
6 regard to the race, color, disability, sex, religion, age, or  
7 national origin of the appointee.

8       Sec. 506.102. DUTIES OF ADVISORY BOARD. The advisory board  
9 shall provide advice and recommendations to the department on  
10 technical matters relevant to the administration of this chapter.

11       Sec. 506.103. TERMS; VACANCY. (a) Members of the advisory  
12 board serve staggered six-year terms, with the terms of three  
13 members expiring February 1 of each odd-numbered year.

14       (b) A member may not serve more than two consecutive  
15 six-year terms.

16       (c) If a vacancy occurs during a member's term, the  
17 presiding officer of the commission, with the commission's  
18 approval, shall appoint a replacement who meets the qualifications  
19 for the vacant position to serve for the remainder of the term.

20       Sec. 506.104. PRESIDING OFFICER. The presiding officer of  
21 the commission shall designate a member of the advisory board to  
22 serve as the presiding officer of the advisory board for a term of  
23 one year. The presiding officer of the advisory board may vote on  
24 any matter before the advisory board.

25       Sec. 506.105. MEETINGS. The advisory board shall meet at  
26 least twice each year and at the call of the presiding officer of  
27 the commission or the executive director.



SUBCHAPTER D. POWERS AND DUTIES

Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The department shall:

(1) evaluate the qualifications of license applicants;

(2) provide for the examination of license applicants;

(3) in connection with a hearing under this chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and

(4) investigate persons engaging in practices that violate this chapter.

Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. The commission shall adopt rules under this chapter that establish standards of ethical practice.

Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated under this chapter.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Sec. 506.202. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and

materials compiled by the department in connection with the complaint and investigation are not subject to:

- (1) disclosure under Chapter 552, Government Code; or
- (2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the department in connection with the complaint, in accordance with Chapter 611, Health and Safety Code, may be disclosed to:

- (1) the department and its employees or agents involved in license holder discipline;
- (2) a party to a disciplinary action against the license holder or that party's designated representative;
- (3) a law enforcement agency if required by law;
- (4) a governmental agency if:
  - (A) the disclosure is required or permitted by law; and
  - (B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or
- (5) the legislature.

(c) The department shall protect the identity of any patient whose records are examined in connection with a disciplinary investigation or proceeding against a license holder, except:

- (1) a patient who initiates the disciplinary action;
- or
- (2) a patient who has submitted a written consent to release the records.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by Subchapter B, a person may not engage in the practice of applied behavior analysis unless the person holds a license under this chapter.

(b) A person may not use the title "licensed behavior analyst" or "licensed assistant behavior analyst," as appropriate, unless the person is licensed under this chapter.

(c) Except as provided by Subchapter B, a person may not use the title "behavior analyst" unless the person is licensed under this chapter.

Sec. 506.252. LICENSE APPLICATION. Each applicant for a license under this chapter must submit an application and the required fees to the department. The application must include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check.

Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST. An applicant for a license as a licensed behavior analyst must present evidence to the department that the applicant:

(1) is currently certified by the certifying entity as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst--Doctoral or an equivalent certification issued by the certifying entity;

(2) has met the educational requirements of the Board Certified Behavior Analyst standard or the Board Certified Behavior Analyst--Doctoral standard or an equivalent standard adopted by the

certifying entity;

(3) has passed the Board Certified Behavior Analyst examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis;

(4) is in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and

(5) is not subject to any disciplinary action by the certifying entity.

Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR ANALYST. An applicant for a license as a licensed assistant behavior analyst must present evidence to the department that the applicant:

(1) is currently certified by the certifying entity as a Board Certified Assistant Behavior Analyst or an equivalent certification issued by the certifying entity;

(2) has met the educational requirements of the Board Certified Assistant Behavior Analyst standard or an equivalent standard adopted by the certifying entity;

(3) has passed the Board Certified Assistant Behavior Analyst examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis;

(4) is in compliance with all professional, ethical, and disciplinary standards established by the certifying entity;

(5) is not subject to any disciplinary action by the certifying entity; and

(6) is currently supervised by a licensed behavior

1 analyst in accordance with the requirements of the certifying  
2 entity.

3 Sec. 506.255. ISSUANCE OF LICENSE. The department shall  
4 issue a license as a licensed behavior analyst or a licensed  
5 assistant behavior analyst, as appropriate, to an applicant who:

- 6 (1) complies with the requirements of this chapter;  
7 (2) meets any additional requirements the commission  
8 establishes by rule; and  
9 (3) pays the required fees.

10 Sec. 506.256. RECIPROCITY. (a) The department shall issue  
11 a license to a person who is currently licensed as a behavior  
12 analyst or as an assistant behavior analyst from another state or  
13 jurisdiction that imposes licensure requirements similar to those  
14 specified in this chapter.

15 (b) An applicant for a reciprocal license shall:

16 (1) submit evidence to the department that the  
17 applicant:

18 (A) is in good standing as determined by the  
19 department;

20 (B) holds a valid license from another state or  
21 jurisdiction; and

22 (C) is in compliance with other requirements  
23 established by Section 506.252, 506.253, 506.254, or 506.255, as  
24 appropriate; and

25 (2) pay the required fees.

26 Sec. 506.257. RETIREMENT STATUS. The commission by rule  
27 may adopt a system for placing a person licensed under this chapter

on retirement status.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 506.301. LICENSE EXPIRATION. A license issued under this chapter expires on the second anniversary of the date of issuance.

Sec. 506.302. LICENSE RENEWAL. Before the expiration of a license, a license may be renewed by:

(1) submitting an application for renewal;

(2) paying the renewal fee imposed by the commission;

and

(3) providing verification to the department of continued certification by the certifying entity, which signifies that the applicant for renewal has met any continuing education requirements established by the certifying entity.

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. After a hearing, the commission or executive director may deny a license to an applicant, suspend or revoke a person's license, or place on probation a license holder if the applicant or license holder:

(1) violates this chapter or a commission order or rule;

(2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barter, or offers to sell or barter a license; or

(4) engages in unprofessional conduct that:

1           (A) endangers or is likely to endanger the  
2 health, welfare, or safety of the public as defined by commission  
3 rule; or

4           (B) violates the code of ethics adopted and  
5 published by the commission.

6           SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

7           Sec. 506.401. AMOUNT OF ADMINISTRATIVE PENALTY. The amount  
8 of an administrative penalty imposed against a person licensed  
9 under this chapter who violates this chapter or a rule or order  
10 adopted under this chapter may not exceed \$200. Each day a  
11 violation continues or occurs is a separate violation for the  
12 purpose of imposing a penalty.

13          Sec. 506.402. CIVIL PENALTY. (a) A person found by a court  
14 to have violated this chapter is liable to this state for a civil  
15 penalty of \$200 for each day the violation continues.

16          (b) A civil penalty may be recovered in a suit brought by the  
17 attorney general, a district attorney, or a county attorney.

18          Sec. 506.403. CRIMINAL OFFENSE. (a) A person commits an  
19 offense if the person knowingly violates this chapter.

20          (b) An offense under this section is a Class A misdemeanor.

21          SECTION 3. As soon as practicable after the effective date  
22 of this Act, the presiding officer of the Texas Commission of  
23 Licensing and Regulation shall appoint nine members to the Behavior  
24 Analyst Advisory Board in accordance with Chapter 506, Occupations  
25 Code, as added by this Act. In making the initial appointments, the  
26 presiding officer of the commission shall designate three members  
27 for terms expiring February 1, 2019, three members for terms

1 expiring February 1, 2021, and three members for terms expiring  
2 February 1, 2023.

3       SECTION 4. Not later than January 1, 2018, the Texas  
4 Commission of Licensing and Regulation shall adopt the rules,  
5 procedures, and fees necessary to administer Chapter 506,  
6 Occupations Code, as added by this Act.

7       SECTION 5. Notwithstanding Chapter 506, Occupations Code,  
8 as added by this Act, a behavior analyst or assistant behavior  
9 analyst is not required to hold a license under that chapter to  
10 practice as a licensed behavior analyst or licensed assistant  
11 behavior analyst in this state before June 1, 2018.

12       SECTION 6. (a) Except as provided by Subsection (b) of  
13 this section, this Act takes effect September 1, 2017.

14       (b) Section 506.251, Occupations Code, and Subchapter I,  
15 Chapter 506, Occupations Code, as added by this Act, take effect  
16 June 1, 2018.